

are not limited to, those relating to: procedures pursuant to § 601.702(d) of this chapter; Freedom of Information Act requests pursuant to 5 U.S.C. 552; Privacy Act of 1974 requests pursuant to 5 U.S.C. 552a; disclosures to state tax agencies pursuant to section 6103(d) of the Internal Revenue Code (Code); and disclosures to the United States Department of Justice pursuant to an ex parte order under section 6103(i)(1) of the Code.

(c) *Disclosures of IRS records or information with or without testimony authorization must be permitted under other applicable law.* Any disclosure of IRS records or information that is otherwise permissible under this section must not be prohibited under applicable law. For example, in a case in which returns and return information may be disclosed, the disclosure must be authorized under section 6103, even if any required testimony authorization is obtained. If tax convention information (as defined under section 6105) may be disclosed, in deciding whether the disclosure is authorized, the authorizing official must coordinate the disclosure with the U.S. Competent Authority.

[T.D. 9178, 70 FR 7397, Feb. 14, 2005]

§ 301.9000-4 Procedure in the event of a request or demand for IRS records or information.

(a) *Purpose and scope.* This section prescribes procedures to be followed by IRS officers, employees and contractors upon receipt of a request or demand in matters in which a testimony authorization is or may be required.

(b) *Notification of the Disclosure Officer.* Except as provided in paragraphs (c), (d), and (e) of this section, an IRS officer, employee or contractor who receives a request or demand for IRS records or information for which a testimony authorization is or may be required shall notify promptly the disclosure officer servicing the IRS officer's, employee's or contractor's geographic area. The IRS officer, employee or contractor shall await instructions from the authorizing official concerning the response to the request or demand. An IRS officer, employee, or contractor who receives a request or demand in one of the following matters should not

notify the disclosure officer, but should follow the instructions in paragraph (c), (d), or (e) of this section, as applicable:

(1) United States Tax Court cases.

(2) Personnel matters, labor relations matters, government contract matters, matters related to informant claims or matters related to the rules of *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) (Bivens matters), or matters under the Federal Tort Claims Act (FTCA).

(3) IRS congressional matters.

(c) *Requests or demands in United States Tax Court cases.* An IRS officer, employee or contractor who receives a request or demand for IRS records or information on behalf of a petitioner in a United States Tax Court case shall notify promptly the IRS Office of Chief Counsel attorney assigned to the case. The IRS Office of Chief Counsel attorney shall notify promptly the authorizing official. The IRS officer, employee or contractor who received the request or demand shall await instructions from the authorizing official.

(d) *Requests or demands in personnel, labor relations, government contract, Bivens or FTCA matters, or matters related to informant claims.* An IRS officer, employee or contractor who receives a request or demand, on behalf of an appellant, grievant, complainant or representative, for IRS records or information in a personnel, labor relations, government contract, Bivens or FTCA matter, or matter related to informant claims, shall notify promptly the IRS Associate Chief Counsel (General Legal Services) attorney assigned to the case. If no IRS Associate Chief Counsel (General Legal Services) attorney is assigned to the case, the IRS officer, employee or contractor shall notify promptly the IRS Associate Chief Counsel (General Legal Services) attorney servicing the geographic area. The IRS Associate Chief Counsel (General Legal Services) attorney shall notify promptly the authorizing official. The IRS officer, employee or contractor who received the request or demand shall await instructions from the authorizing official.

(e) *Requests or demands in IRS congressional matters.* An IRS officer, employee or contractor who receives a request or

demand in an IRS congressional matter shall notify promptly the IRS Office of Legislative Affairs. The IRS officer, employee or contractor who received the request or demand shall await instructions from the authorizing official.

(f) *Opposition to a demand for IRS records or information in IRS and non-IRS matters.* If, in response to a demand for IRS records or information, an authorizing official has not had a sufficient opportunity to issue a testimony authorization, or determines that the demand for IRS records or information should be denied, the authorizing official shall request the government attorney or other representative of the government to oppose the demand and respectfully inform the court, administrative agency or other authority, by appropriate action, that the authorizing official either has not yet issued a testimony authorization, or has issued a testimony authorization to the IRS officer, employee or contractor that denies permission to testify or disclose the IRS records or information. If the authorizing official denies authorization in whole or in part, the government attorney or other representative of the government shall inform the court, administrative agency or other authority of the reasons the authorizing official gives for not authorizing the testimony or the disclosure of the IRS records or information or take other action in opposition as may be appropriate (including, but not limited to, filing a motion to quash or a motion to remove to Federal court).

(g) *Procedure in the event of an adverse ruling.* In the event the court, administrative agency, or other authority rules adversely with respect to the refusal to disclose the IRS records or information pursuant to the testimony authorization, or declines to defer a ruling until a testimony authorization has been received, the IRS officer, employee or contractor who has received the request or demand shall, pursuant to this section, respectfully decline to testify or disclose the IRS records or information.

(h) *Penalties.* Any IRS officer or employee who discloses IRS records or information without following the provisions of this section or § 301.9000-3, may

be subject to administrative discipline, up to and including dismissal. Any IRS officer, employee or contractor may be subject to applicable contractual sanctions and civil or criminal penalties, including prosecution under 5 U.S.C. 552a(i), for willful disclosure in an unauthorized manner of information protected by the Privacy Act of 1974, or under section 7213 of the Internal Revenue Code, for willful disclosure in an unauthorized manner of return information.

(i) *No creation of benefit or separate privilege.* Nothing in §§ 301.9000-1 through 301.9000-3, this section, and §§ 301.9000-5 and 301.9000-6, creates, is intended to create, or may be relied upon to create, any right or benefit, substantive or procedural, enforceable at law by a party against the United States. Nothing in these regulations creates a separate privilege or basis to withhold IRS records or information.

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§ 301.9000-5 Written statement required for requests or demands in non-IRS matters.

(a) *Written statement.* A request or demand for IRS records or information for use in a non-IRS matter shall be accompanied by a written statement made by or on behalf of the party seeking the testimony or disclosure of IRS records or information, setting forth—

(1) A brief description of the parties to and subject matter of the proceeding and the issues;

(2) A summary of the testimony, IRS records or information sought, the relevance to the proceeding, and the estimated volume of IRS records involved;

(3) The time that will be required to present the testimony (on both direct and cross examination);

(4) Whether any of the IRS records or information is a return or is return information (as defined in section 6103(b) of the Internal Revenue Code (Code)), or tax convention information (as defined in section 6105(c)(1) of the Code), and the statutory authority for the disclosure of the return or return information (and, if no consent to disclose pursuant to section 6103(c) of the Code accompanies the request or demand, the reason consent is not necessary);